IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 21.08.2006

CORAM

THE HON'BLE MR. JUSTICE N. PAUL VASANTHAKUMAR

W.P.Nos.4185 to 4193/2004 and W.P.M.P.Nos.4924 to 4932/2004

W.P.No.4185/2004 to W.P.No.4193/2004:

PSG & Sons Charities,
Owning PSG College of Technology
and Polytechnic Peelamedu, Coimbatore 641004
represented by its Managing Trustee through
his Power of Attorney R.Nanda Kumar .. Petitioner in all WPs.

vs

1.The Assistant Commissioner,
Urban Land Tax, Coimbatore 641 018.

2.The Special Tahsildar,
Urban Land Tax Collection,
Coimbatore 641 018. .. Respondents in all WPs.

W.P.No.4185/2006: Petition filed under Article 226 of the Constitution of India, praying this Court for the issue of a Writ of certiorarified mandamus calling for the entire records in connection with the impugned proceedings of the 1st respondent in Assessment No.ULTC No.528, 525, 524, 527, 526, 523, 522, 520, 521/SWP/1401 dated 24.02.2003 and quash the same and consequently forbear the respondents from assessing, levying and collecting urban land tax from the petitioner.

For Petitioner in WP.No.4185/06 ... Mr.D.Balaraman
For respondents in WP.No.4185/06... Mr.Haja Nazirudeen,
Spl.GP(Tax)

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COMMON ORDER

When the miscellaneous petitions were posted for hearing today, by the consent of the counsel on either side, the main writ petitions themselves are taken up for final disposal.

2.Brief facts necessary for the disposal of these writ petitions are:

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The petitioner is a public Charitable Trust owning PSG College of Technology and Polytechnic and other educational institutions. These institutions are functioning as one entity and are recognised by the Government of Tamilnadu. Some of the institutions are aided and the technical institutions are affiliated to Anna University. The institution is owning lands in Survey S.F.Nos.465/4, 465/5. 505, 506, 511/1. 512/1.292/P, 293, 294/1. 2 and 3, 295/1,2 and3, 491/1 and 2, 465/1 Part, 464/2 Part, 439/1 Part, 464/1 Part, 438/2 and 438/1 with an extend of 789 grounds and 396 sq.ft., in Sowripalayam Village, Coimbatore Taluk, Coimbatore District.

3.According to the petitioner, section 29(h) of the Tamilnadu Urban Land Tax Act, 1966, exempts certain categories of lands from the purview of the said Act as far as Educational institutions are concerned. For proper appreciation section 29(h) is extracted hereunder:

> "any urban land used by schools, colleges or universities for purposes directly connected with education, but not including any urban land owned by such educational institutions and-
>
> (i)which is vacant, or
>
> (ii)in which buildings from which income is derived have been constructed.
>
> Explanation 1:- For the purposes of this clause, schools or colleges shall mean only such schools or colleges which are educational institutions recognised either by the Government or by any University, as the case may be.
>
> Explanation 2 :- For the removal of doubts, it is hereby declared that the urban land on which schools, colleges or universities or staff quarters or hostels or other buildings used for the welfare of the students, have been constructed, or used as playgrounds attached to such schools, colleges or universities, shall be deemed to be urban land used for the purposes directly connected with education."

4.According to the petitioner, since it is running educational institutions the urban land owned by the Trust are exempted under section 29(h) of the Act. On 24.2.2003, the respondents assessed the urban land tax under section 11(2) and (3) read with 5-G and 40-A of the said Act and passed orders stating that the petitioner did not file the returns and that notices were issued calling for an objection for the proposed assessment and that the petitioner has not filed any objection and based on the spot

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inspection and enquiry, it was found that the petitioner institution is financially sound and is deriving income from various sources and therefore, the institution is not eligible for automatic exemption under section 29(h) of the Act and the petitioner is liable for taxation. Accordingly, the urban land tax is levied from Fasli 1401 onwards and also levied 10% penalty for the Faslies from 1401 to 1412. The said orders are challenged in these writ petitions.

5.The learned counsel for the petitioner argued that no notice was issued to the petitioner by the respondents as required under Form 4-C of the Tamilnadu Urban Land Tax Act,1966 and there was no demand from the petitioner by the Urban Land Authority. If really a statutory notice as contemplated under the Act before making the assessment was issued, the petitioner would have explained that the petitioner institution will not come under the purview of the Act. According to the learned counsel, the allegation that the petitioner institution is deriving income from various sources is not correct and the petitioner institution is run by a public charitable trust and is naturally exempted from the purview of the Tamil Nadu Urban Land Tax Act,1966.

6.The learned counsel for the respondents on the contrary, submits that the impugned orders refer to the service of notice and the petitioner has not furnished any explanation and therefore, the impugned orders are sustainable as it was factually found that the institutions run by the petitioner trust are not eligible for automatic exemption under section 29(h) of the Act.

7.I have considered the rival submissions made by the counsel on either side.

8.Section 29(h) of the Act grants exemption for paying urban land tax for the lands used by Schools, Colleges or Universities directly connected with the education but not including any urban land owned by such educational institution which is vacant or in which buildings from which income is derived to have been constructed. From the above, it is clear that whether or not an educational institution is entitled to exemption or not, has to be ascertained by the authorities. Section 27 of the Act further states that the Government is empowered to grant exemption or to reduce the urban land tax. Section 27 reads as follows:

> "Power of Government to exempt or reduce urban land tax:-
>
> (1)The Government is satisfied that the payment or urban land tax in respect of any class or urban lands or by any class of persons will cause undue hardship,

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they may, subject to such rules as may be made in this behalf, by order-

(a) exempt such lands or persons from the payment of the urban land tax; or

(b) reduce the amount of such urban land tax whether prospectively or retrospectively.

(2) The Government may at any time cancel or modify any order issued under sub-section (1) and upon such cancellation or modification, the entire amount of urban land tax, or the amount of urban land tax due under the modified order, as the case may be, shall be payable in respect of the land concerned with effect from the fasli year in which such cancellation or modification is made:

Provided that no such cancellation or modification shall be made unless the party likely to be affected by such cancellation or modification has had a reasonable opportunity of making his representations."

9. To ascertain whether the petitioner trust is entitled to be granted exemption or not has to be decided by the authorities and proposal has to be submitted by the respondents to the Government. Section 27 of the Act contemplates that before passing an order, the authorities are bound to give notice and opportunity of hearing to show the hardship that may arise if exemption is withdrawn or reduction of urban land tax is withdrawn. Section 29(h) grants automatic exemption to educational institutions and if the exemption is not entitled to be enjoyed by the petitioner trust, the respondents are bound to give notice under Form 4-C which is extracted here under:

FORM 4-C
[See rule 17(36)]

Form of notice under section 1(10 read with sections 7-D and 40-A of the Tamil Nadu Urban Land Tax Act, 1966.

To

Please take notice that you have failed to furnish the return under section 7-D of the Tamil Nadu Urban Land Tax Act, 1966, as amended by the Tamil Nadu Urban Land Tax (Amendment)Act, 1991. The particulars of Urban Land in respect of which you, as

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the Urban Land owner, should have submitted the return under section 7-D, are furnished below:

Name of the City or Town (1)	Division (2)	Ward/Block number (3)	Survey No. & Sub-Division No.(4)	Extent (5)	Market value per ground (6)

You are required to lodge before the Assistant Commissioner of Urban Land Tax ..... within 15 days from the date of service of this notice a statement in writing of your objections, if any, to re-assessment of the above mentioned urban land under the provisions of the Amendment Act, 1991.

It has also been proposed to impose a penalty not exceeding half of the amount of urban land tax for your failure to file the return under section 7-D of the Act. You may also avail yourself of this opportunity to explain as to why this proposed penalty should be confirmed.

The objections will be enquired into ..... at ..... a.m./noon/p.m. ..... on..... (date).....(place) when you will be at liberty to appear in person or by an authorised agent and to adduce any oral or documentary evidence in support of your objections, failing which the amount of Urban Land Tax will be revised under the provisions of the Amendment Act, 1991 on the basis of the particulars furnished above and the proposed imposition of penalty will also be confirmed.

Place:
Date:

Assistant Commissioner
of Urban Land Tax

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10.According to the petitioner, no Form 4-C notice was issued to the petitioner before passing the impugned order. But the impugned order says that the petitioner did not file the return under section 7-D of the Act; Form 4-C notice was issued to the assessee and called for objections, and that the petitioner neither appeared for enquiry nor filed any objection. It is further stated therein that the spot inspection was conducted and the enquiry reveals that the institution is financially sound and deriving income from various sources, and

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hence, not eligible for automatic exemption under section 29(h) of the Act.

11.Learned counsel for the petitioner asserts that no notice under Form 4-C was issued and the same is not denied in the counter affidavit. Therefore, it has to be presumed that no Form 4-C notice was issued and objections were called for. According to the impugned order, spot inspection and enquiry was conducted, for which the petitioner was not given any notice. When the respondents having chosen to pass orders based on the spot inspection and enquiry, it is mandatory on the part of the respondents to give advance intimation with regard to the spot inspection and enquiry. But the inspection was made behind the back of the petitioner and based on which an unilateral conclusion was arrived at stating that the institutions run by the petitioner trust is financially sound one and deriving income form various sources. Based on the said conclusion only, the exemption, which is contemplated under section 29(h) of the Act is denied to the petitioner trust. The said decision having a civil consequence cannot be made behind the back of the petitioner, particularly as stated in the impugned order. Even assuming that Form 4-C notice was issued to the petitioner and the petitioner has not filed any objection, admittedly no notice was issued by the authorities while making spot inspection and enquiry.

12.The enquiry report submitted on spot inspection is also not furnished to the petitioner and without furnishing the same, an unilateral decision was taken by the respondents, pursuant to which the impugned demand of urban land tax is made with penalty of 10% interest. The said action of the respondents cannot be approved as it s in violation of the principles of natural justice. The order is an adverse order passed against the petitioner with civil consequences.

13.In view of the said findings, the impugned orders are set aside and the respondents are given liberty to issue fresh Form 4-C notice, obtain the objections of the petitioner and also make spot inspection, if necessary, with due notice to the petitioner trust. If any report is relied upon, a copy of the same shall also be furnished to the petitioner before passing any order.

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14.With the above directions, the writ petitions are allowed with liberty to the respondents to proceed afresh, if it is warranted. No costs. Consequently, connected W.P.M.Ps. are closed.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

ap

To

1.The Assistant Commissioner,
Urban Land Tax, Coimbatore 641 018.

2.The Special Tahsildar,
Urban Land Tax Collection,
Coimbatore 641 018.

+ 1 CC to the Spl.Government Pleader SR NO 37786

+ 2 CCs To Mr.D.Balaraman, Advocate SR NO.37785

W.P.No.4185 to 4193/2004

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